



May 30, 2008

Ms. Delores Brown,
Chief, Office of Environmental Compliance
Department of Water Resources,
P. O. Box 942836
Sacramento, CA 94236

Re: NOP Comments on BDCP EIR/EIS

Dear Ms. Brown:

This letter provides the City of Antioch's ("City") comments on the Notice of Preparation ("NOP") for the joint Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") on the Sacramento-San Joaquin Bay Delta Conservation Plan ("BDCP").

I. INTRODUCTION

A. Antioch's Beneficial Uses of Delta Water

Antioch is Contra Costa County's oldest incorporated City. Antioch began diverting water from the Delta prior to December 19, 1914, the date the Water Commission Act became effective. As a result, the City holds some of the highest priority water rights in the Delta.

The City's water rights are protected by law. As a municipality, the City's rights to the use of Delta water are protected "to the fullest extent necessary for existing and future uses." (Water Code, § 106.5.) The City's right to water of suitable quality is also protected. Additionally, Antioch has "Delta priority" under Water Code section 12202, which states that the SWP shall provide "salinity control and an adequate water supply for the users of water in the Sacramento-San Joaquin Delta." Watershed of origin protections also apply to ensure the beneficial needs of the City's in-watershed uses are met. (See, e.g., Water Code, § 11460.)

As a result of the City's reliance on in-basin use of Delta water, the City's primary concern with the BDCP is how any changes in operation of the SWP and CVP ("the Projects") could affect the City's ability to continue meeting the needs of its customers.

B. Input on BDCP Process

Representatives of the City have attended the BDCP Steering Committee meetings as well as Work Group and Technical Team meetings. The City offers the following feedback on the process thus far for the consideration of DWR and other involved entities:

1. Accessibility of Information. The ability of interested parties to understand and meaningfully participate in the development of the BDCP could be enhanced by improving accessibility of written and other materials being considered in the planning process. DWR may wish to consider hosting a FTP site where information may be organized and posted expeditiously for public viewing and comment. While the City recognizes that the documents involved are drafts, the public's interest in having the ability to understand and participate in the BDCP process outweighs any legitimate state interest served by precluding release of such information. Moreover, creating greater online accessibility to the relevant documents would eliminate the need for interested parties to physically travel to Sacramento for meetings, thus conserving resources and preventing pollution.

2. Stakeholder Involvement. The City understands that the need for the Projects' compliance with federal and state mandates pertaining to protection of special status species is the driver for development of the BDCP. The options under consideration by the BDCP to address these issues, however, may have far reaching effects on many other legal users of water within the Delta. Because in-Delta water users such as the City have such a crucial stake in how the BDCP is designed and implemented, the BDCP will need to specifically address in-Delta concerns to succeed. The City understands that inclusion of one or more in-Delta representatives on the Steering Committee may be under consideration; though the City believes that in-Delta interests should have been included from the outset of the process, the City supports the Steering Committee's work toward fuller inclusion of in-Delta interests in the process.

3. Peripheral Canal. The NOP characterizes a dual or isolated conveyance system as a possible conservation action. While the term "conservation action" is not specifically defined in the Endangered Species Act, it appears that the

reference relates to the ability of such a system to reduce or mitigate impacts of the projects on special status species. To the extent such a "mitigation measure" would also create its own environmental impacts -- which would prevent much of the water currently flowing into the Delta from ever reaching the Central and South Delta -- those impacts must also be disclosed and mitigated. The City urges DWR to remain open to consideration of alternatives that would address special status species needs without construction of such a massive and irreversible infrastructure project.

II. NOP COMMENTS

A. Project Definition

1. Clearly Defined Project. The NOP is very vague with respect to what project the involved entities actually propose to analyze and implement. The City understands that several alternatives will be considered at an equal degree of detail, consistent with NEPA. To properly facilitate public comment, the Draft EIR/EIS should clearly identify the preferred project. Otherwise, interested observers will be required to assess and comment on alternatives that may have already internally been rejected.
2. Adequate Water Supply. One of the planning criteria for selection of the suite of options under consideration for the BDCP includes meeting water supply goals. Though not stated in the materials, this goal appears to include only meeting the water supply goals of water exporters. To the extent this goal is converted to an objective of the BDCP project guiding the environmental review process, the objective should also include meeting in-Delta water demands. Changes in operation requiring approval of change in use or point of diversion by SWRCB may not be approved if that change would result in injury to any other legal user of water. (See, e.g. Water Code, §§ 1700 et seq.)
3. Document Type. Part of an adequate project description includes a clear explanation of document type. To the extent DWR intends to analyze project activities at a "project" level, a sufficient degree of detail must be provided to fully assess the impacts of that action. If further environmental review will be conducted at a later phase, a lesser degree of detail may be acceptable.
4. Discretionary Decisions To Be Covered. The Draft EIR/EIS should clearly list all discretionary decisions that are expected to rely on the document for provision of environmental analysis. Many discretionary decisions by multiple local, state and federal entities will likely be necessary to implement any of the options under consideration. Listing of those actions and initiation of consultation with responsible

agencies early in the process would assist in the development of a comprehensive environmental document.

B. Environmental Impacts

1. Effects On In-Delta Natural Resources. Options under consideration have the potential to have extensive impacts on in-Delta resources that must be considered. Impacts to all special status species and other natural communities must be fully analyzed. Changes in operation of the Projects, particularly flow and resulting water quality changes, could have ripple effects to species that are not yet been at issue in federal court litigation. For instance, while conveyance around the Delta may reduce impacts relating to fish entrapment at the Projects' pumps, the resulting lack of flows within certain areas of the Delta may be detrimental to fish and other aquatic organisms.

2. Existing Water Rights, Including Municipal Uses. Options under consideration have the potential to have extensive impacts on in-Delta resources that must be considered. For instance, changes to operation of the Projects, particularly out of Delta conveyance options, have the potential to dramatically change the level of salts and other pollutants found within the Delta. Specific modeling should be conducted to determine how various options would affect the number of days in which water quality conditions would constrain Antioch's ability to exercise its senior water rights. SWRCB cannot approve changes to Project appropriative rights that would harm any other legal user of water.

C. Mitigation Measures/Alternatives

1. Reductions in Exports. Existing project-related exports would be a covered activity under the Incidental Take Permit. Reductions in water exports, especially during times when water resources are needed within the Delta for beneficial instream uses and consumptive uses by senior water rights holders, should be considered as a possible alternative/mitigation measure to lessen the Project's impact on special status species. Exports of water currently put a tremendous strain on the Delta and its tributaries; addressing these difficult species issues equitably may require changes to the volume of water diverted by the Projects in addition to the other possible measures listed in the NOP. Through land retirement, conservation and other measures, the demand for exported water could be reduced while continuing to serve existing out of Delta beneficial uses. Consideration of reductions in exports is consistent with the requirements of Water

Ms. Delores Brown

May 30, 2008

Page 5

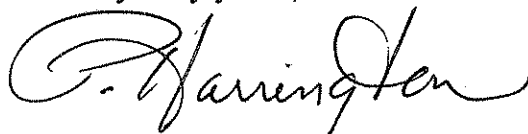
Code section 12204 that water shall not be exported that is necessary to maintain control of salinity (Water Code, § 12202) and protect in-Delta water rights (Water Code, § 12203).

2. Water Conservation. Antioch has made great strides over the years in conserving water, most recently by upgrading its water treatment system to have the capacity to recycle up to a million gallons of water per day. Implementation of additional water conservation measures by Delta water users -- especially those uses that remove water from the watershed completely -- are potentially feasible means to lessen significant impacts associated with operation of the Projects. Inclusion of such mitigation measures in the Draft EIR/EIS would help ensure that the burdens of protecting special status species in the Delta from impacts relating to diversions are shared equitably.

V. CONCLUSION

The City hopes that the significant public and private investment dedicated thus far to addressing the special issues of the Delta, through the BDCP and other processes, yields tangible improvements to the challenged Delta system. Because the Delta is the central water hub of California, decision making based on a full consideration of all environmental impacts is essential. The City looks forward to participating in the BDCP process to ensure that the City's longstanding beneficial uses of Delta water are protected. Please feel free to contact me with any questions about the information contained in this letter.

Very truly yours,



Phillip L. Harrington
Director of Capital Improvements/Water
Rights

C: Jim Jakel, City Manager
Arlene Mornick, Assistant City Manager
Lynn Tracy Nerland, City Attorney
Matt Emrick, Soluri Emrick & Meserve